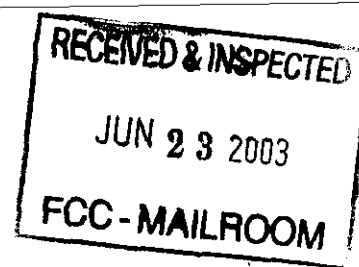


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BEFORE
THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554

In the Matter of

ClickQuick II, LLC, San Marino at)
Laguna Lakes, L.L.C. a/k/a Bear Lakes)
Associates, Ltd., and Villa Del Sol,)
L.L.C. a/k/a VDS Associates, Ltd.)
Against BellSouth Telecommunications, Inc.)
First Amended Petition for Declaratory)
Ruling that the Location of the Demarcation)
Point Pursuant to 47 C.F.R. §68.105(D)(2))
Preempts the Location of the Demarcation)
Point Pursuant To §25-4.0345(1)(B)(2))
Of the Florida Administrative Code)

WC Docket No. 03-112

REPLY COMMENTS OF CLICKQUICK II, LLC,
SAN MARINO AT LAGUNA LAKES, L.L.C.
a/k/a BEAR LAKES ASSOCIATES, LTD., AND
VILLA DEL SOL, L.L.C. a/k/a VDS ASSOCIATES, LTD.

Introduction

These reply comments are submitted by Petitioners ClickQuick II, Inc. ("ClickQuickII") and San Marino at Laguna Lakes, L.L.C., a/k/a Bear Lakes Associates, Ltd., and Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd. (jointly the "Owners").¹ For the reasons set forth below, the comments made by BellSouth Telecommunications, Inc. ("BellSouth") dated June 4, 2003 in opposition to the Petition (the "BellSouth Comments") and the comments of the Florida Public Service Commission ("FPSC") dated June 3, 2003 in opposition to the Petition (the "FPSC Comments") have no merit and the Petition should be granted.

¹ Capitalized terms have the same meaning in these Reply Comments as in the First Amended Petition.

The Florida Rule Conflicts with the Federal Rule.

Both BellSouth and FPSC claim that §25-4.0345(1)(B)(2) of the Florida Administrative Code (the “Florida Rule”) can “coexist” with the 47 C.F.R. §68.105(d)(2) (the “Federal Rule”) in locating the demarcation points at Villa Del Rio and San Marino (the “Properties”). FPSC suggests the Florida Rule sets a “ceiling” for the location of the demarcation point while the Federal Rule sets a “floor.” FPSC Comments at p. 3. BellSouth claims that “the federal policy . . . favoring premises owners’ ability to place the demarcation point virtually anywhere they chose was determined by the Commission *not* to be negated by the Florida Rule.” [emphasis in the original]. BellSouth Comments at p. 9. Somewhere in their pursuit of vigorous advocacy, BellSouth and FPSC crossed the line from hyperbole to the untenable position that the Florida Rule and the Federal Rule are not in conflict with each other. They are and FPSC has admitted it.

When FPSC first considered filing comments in this proceeding, it sent a memo to the Petitioners advising them of the contemplated action. A true copy of that memo is attached as Exhibit A. The memo describes the facts in this proceeding and the effect of the Federal Rule on the Florida Rule. The memo succinctly states that “[t]he two rules are in conflict.”

The Federal Rule creates a procedure by which the carrier and property owner select the demarcation point. The carrier has the option, in the first instance, to designate the demarcation point at the minimum point of entry (“MPOE”). The MPOE can be either at the property line or “the closest practicable point to where the wiring enters a multiunit building or buildings.” 47 C.F.R. §68.105(b).

Under the Federal Rule, BellSouth had the option to designate either the property line or the utility closets at the Properties as the demarcation points. See Declaration of Alan Moore dated June 17, 2003 attached as Exhibit B (the “Moore Declaration”) at ¶10. The language of the Federal Rule is permissive – “the provider of wireline telecommunications *may* place the demarcation point at the minimum point of entry (MPOE)” [emphasis added].

When, as in this case, the carrier elects to not set the demarcation point at the MPOE, then the property owner is *obligated* by the Federal Rule to designate the demarcation point.² The language in the Federal Rule is mandatory on this point – “the multiunit premises owner *shall* determine the location of the demarcation point or points.” [emphasis added]. As BellSouth correctly notes, the Commission intended to give the Owners very broad latitude to set the demarcation points, in the absence of an MPOE designation by the carrier.³

The Federal Rule makes the property owner the person responsible for selecting the demarcation point if the carrier abdicates its right to select which MPOE to use. Under the Federal Rule, federal and state governments cannot dictate to or even guide the

² BellSouth admits that it did not set the demarcation points at the MPOE’s of the Properties. “BellSouth has not established an MPOE policy, but it is not required to.” BellSouth Comments at p. 12.

³ The Federal Rule “allows the premises owners to place the demarcation point virtually anywhere they chose.” BellSouth Comments at p. 9.

property owner on how and where to place the demarcation point.⁴ The responsibility to set the demarcation is allocated in this manner to promote competition in the installation, use and maintenance of inside wiring.

The Commission has found that the public interest is served by detariffing the installation and maintenance of both simple and complex inside wiring and *thus transferring responsibility for such wiring activities from carriers to customers and building owners*. In particular, through its detariffing orders, the Commission sought to make the cost-causative customer bear the costs of connecting CPE to the telephone network, to foster competition in the inside wiring installation and maintenance markets, to promote new entry into those markets, to produce cost savings which would be passed on to ratepayers, and to foster the development of an unregulated, competitive telecommunications marketplace. [emphasis added].⁵

The Florida Rule has a different procedure for setting the demarcation point.

Under the Florida Rule, the demarcation point is set at one of two specific locations in multiunit buildings depending on whether the facilities installed by the carrier are a

⁴ BellSouth would have the Owners jump through the hoops of getting FPSC approval of the demarcation points set by the Owners "for good cause shown" and/or force the Owners to go through the pointless exercise of "relocating" the MPOE under 47 C.F.R. §68.105(c)(3). See Moore Declaration at ¶13. The Federal Rule does not impose these additional burdens on the multiunit property owner who is fulfilling its *obligation* to designate a demarcation point pursuant to 47 C.F.R. §68.105(c)(2) *after* the carrier has failed to select an MPOE as the demarcation point.

⁵ Review of Sections 68.104 and 68.213 of the Commission's Rules Concerning Connection of Simple Inside Wiring to the Telephone Network and Petition for Modification of Section 68.213 of the Commission's Rules filed by the Electronic Industries Association, Order on Reconsideration, Second Report and Order and Second Further Notice of Proposed Rulemaking, CC Docket No. 88-57, RM-5643, FCC No. 97-209, 12 FCC Rcd 11897 (1997) at ¶ 27. FPSC itself recognizes that adopting the MPOE as the demarcation point would foster competition by giving BellSouth's competitors quick and inexpensive access to customers in the multi-tenant environment. See the FPSC's Report on Access by Telecommunications Companies to Customers in the Multitenant Environment (Vol. One 1999) at p. 23 filed by FPSC in the *Competitive Networks* proceeding.

“Single Line” or “Multi Line System”.⁶ The FPSC can change the demarcation point only upon “good cause shown.” This variance requires a showing of “substantial hardship” or that the person seeking a variance is being treated in a “significantly different way” than others. See Section 120.542(2) of the Florida Statutes.

There is a facial inconsistency between the procedures of the Florida Rule and Federal Rule for selecting the demarcation point. But that inconsistency does not necessarily lead to a conflict in the actual location of the demarcation point after the procedures are followed. For example, the Florida Rule sets the demarcation point for Multi Line systems “at a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field.” In the case of the Properties, this would be in the utility closets, which is also an MPOE under the Federal Rule. See Declaration of Alan Moore (the “Moore Declaration”) attached as Exhibit B at ¶¶ 9 to 13. Thus if the facilities at the Properties are Multi Line Systems, then the Owners have placed the demarcation point under the Federal Rule at the same place required by the Florida Rule – in the utility closet – and there is no conflict in the actual location of the demarcation point.⁷

⁶ For a “Single Line” system, the demarcation point is “[w]ithin the customer’s premises at a point easily accessed by the customer.” For “Multi Line Systems,” the demarcation point is “[a]t a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field.”

⁷ BellSouth claims that four (4) twisted pairs of wires going into an apartment unit are a “Single Line” facility even though the wires are capable of carrying the plethora of multi-line services offered by BellSouth. See Moore Declaration at ¶ 5 and Section A.3. of the Florida General Subscriber Service Tariff filed by BellSouth Telecommunications, Inc. on February 22, 2003 at <http://cpr.bellsouth.com/pdf/fl/a003.pdf>. Notably absent from the FPSC Comments is any express or tacit approval of BellSouth’s characterization of four (4) twisted pairs of wires as a “Single Line” facility.

Or, the Owners could have selected a demarcation point at the wall plate within the units. This would have been consistent with both the Florida Rule (as interpreted by BellSouth) and the Federal Rule.

However, in this case the Owners selected a demarcation point under the Federal Rule that is in the utility closets, while the Florida Rule (as interpreted by BellSouth) requires the demarcation point to be inside the customer's premises. Thus there is a clear and actual conflict in the location of the demarcation point under the Federal Rule and the Florida Rule. This conflict requires that the location of the demarcation point pursuant to the Florida Rule be preempted by the location of the demarcation point pursuant to the Federal Rule. *Sprietsma v. Mercury Marine*, 537 U.S. 51, 123 S.Ct. 518, 154 L.Ed.2d 466 (2002) (“[A] federal statute implicitly overrides state law . . . when state law is in actual conflict with federal law.”)

When BellSouth and FPSC previously brought the inconsistencies between the Florida Rule and the Federal Rule to the attention of the Commission, they provided no facts or industry practices that showed how the different procedures would inevitably lead to a conflict in result, i.e. the location of the demarcation point. Accordingly, the Commission deferred on preempting the Florida Rule until such time as facts were presented to the Commission that show an actual conflict when a building owner designates a demarcation point under the Federal Rule that is illegal under state law. This case presents those facts. The Supremacy Clause requires the Commission to grant the Petition and preempt the demarcation point set by the Florida Rule in favor of the demarcation point selected by the Owners pursuant to the Federal Rule.

BellSouth's Factual Assertions Are Incorrect or Unsupported.

BellSouth makes numerous factual assertions that either have no support in the record or are simply incorrect. BellSouth repeatedly complains that the use of two (2) twisted pairs of wiring by ClickQuick II (the "Twisted Pair Wiring") interferes with BellSouth's ability to provide service to its customers. See, e.g., BellSouth Comments at p. 3. However, BellSouth is unable to identify any specific instance of interference.

In truth, ClickQuick II can and does relinquish the use of the Twisted Pair Wiring to BellSouth when requested by the customer. See Moore Declaration at ¶ 3. Ironically, if the Florida Rule for locating "Single Line" facilities were applied at the Properties, the residents would be denied this opportunity to chose between vendors.

BellSouth claims that ClickQuick II "is causing trouble for BellSouth and its customers alike." BellSouth Comments at p. 19. Again, BellSouth fails to provide any specifics. In truth, ClickQuick II has given BellSouth contact information for resolving any technical or interference issues arising out ClickQuick II's use of the Twisted Pair Wiring. BellSouth has never – not once – called that number to report or discuss any technical problems. See Moore Declaration at ¶ 6.

Both FPSC and BellSouth argue that preempting the Florida Rule would frustrate state policies, such as "pinpointing responsibility when there is a problem" or ensuring that customers get dial tone in a timely manner. BellSouth Comments at p. 10 and FPSC Comments at p. 1. However, neither commentator has described any specific instances at the Properties -- backed up with factual proof -- that these or any other state policies have been frustrated by the Owner's selecting the demarcation point under the Federal

Rule. Thus the purported state interests ostensibly promoted by the Florida Rule have no factual support in this proceeding.⁸

BellSouth claims that ClickQuick II is “free to install their own intrabuilding network wiring in the conduit” used by the Twisted Pair. BellSouth Comments at p. 21 This is disingenuous as the conduits will not hold additional wires. See Moore Declaration at ¶ 5.

BellSouth claims that it installed the Twisted Pair Wiring and therefore owns it. However, wiring affixed to land can be a fixture belonging to the property owner under Florida law even if it was installed by a third party.⁹ BellSouth has not offered sufficient facts from which the Commission can conclude that the Twisted Pair Wiring is not a fixture and belongs to BellSouth.¹⁰

⁸ FPSC says that “[h]aving a third party between the ILEC and its customers, such as a building owner, might affect the ILEC’s ability to comply” with FPSC service rules. FPSC Comments at p. 4. Neither ClickQuick II nor the Owner’s are “between” BellSouth and its customers. ClickQuick II is using Twisted Pair Wiring *that is not being used* by BellSouth. Petitioners do not interfere with the use of the Twisted Pair Wiring by BellSouth when BellSouth needs to use it. See Moore Declaration at ¶ 3.

⁹ “[T]he question whether property annexed to realty is a fixture is a question of fact, or a mixed question of law and fact, to be determined by the evidence presented and the particular facts and circumstances of each case.” *Community Bank of Homestead, Appellant v. Barnett Bank of The Keys*, 518 So.2d 928, 12 Fla. Law W. 2843 (Ct. App. 3rd Dist. 1987).

¹⁰ Even if BellSouth does own the Twisted Pair Wiring, the Petition does not implicate any “takings” issues under the Fifth Amendment because ClickQuick II does not claim permanent possession of the Twisted Pair Wiring. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 102 S. Ct. 3164, 73 L. Ed. 2d 868 (1982) (Permanent physical occupation authorized by government is a taking). In fact, ClickQuick II surrenders any use of the Twisted Pair Wiring to BellSouth whenever a customer requests it. Moore Declaration at ¶3.

**BellSouth Acted Unlawfully When It
Set the Demarcation Point in the Customer's Premises.**

BellSouth devotes four pages of its comments to the argument that the Owners cannot “retroactively” set the demarcation point pursuant to the Federal Rule. BellSouth Comments at pp. 16 to 20. BellSouth asks the Commission to “clarify that the [Florida Rule] is preempted on a going forward basis only.” BellSouth Comments at p. 20.

BellSouth makes this peculiar request because BellSouth wants to continue its harassment of ClickQuick II in state court. BellSouth has vowed to continue the state court action against ClickQuick II even if the Commission rules that the demarcation point was properly set by the Owners pursuant to the Federal Rule. BellSouth wants any preemption to be prospective only so it can continue to seek money damages from ClickQuick II for its use of the Twisted Pair Wiring up until the date of a preemption order. To borrow from BellSouth's color metaphors, BellSouth will not rest until it has pummeled ClickQuick II black and blue.¹¹

BellSouth's opposition to making preemption “retroactive” is based on the assumption that BellSouth properly and lawfully set the demarcation point at the customer's premises in the first instance under the Florida Rule. See BellSouth Comments at p. 13 (“BellSouth complied with the Florida rule.”) That assumption is

¹¹ BellSouth is seeking both money damages and an injunction in Florida state court to preclude ClickQuick II from using the Twisted Pair Wiring. The lawsuit is premised on BellSouth's claim that the demarcation points are at the customer's premises under the Florida Rule. If the injunction is granted, then BellSouth will be the sole provider of high speed internet service at one Property with no high speed internet service at the other. This is the very tangible negative impact on competition in the delivery of telecommunications services at the Properties if the Florida Rule is not preempted by the Federal Rule.

wrong. BellSouth acted illegally in setting the demarcation point at the customer's premises.

If and to the extent the Florida Rule purports to require or authorize BellSouth to place the demarcation point at the customer's premises, then the Florida Rule is preempted. The Florida Rule conflicts the Federal Rule on this point because the Federal Rule authorizes BellSouth to place the demarcation point *only* at the MPOE.

By the same token, if and to the extent the Florida Rule requires BellSouth to place the demarcation point in the utility closet "within 25 feet of . . . the cross connect field" (which applies if BellSouth installed a "Multi Line System"), then BellSouth has erred in its characterization of its facilities as "Single Line" and it is not authorized by state law to place the demarcation point at the customer's premises.

Under the Federal Rule, the *only* place BellSouth could have lawfully set the demarcation point in the first instance was the MPOE. The MPOE is "either the closest practicable point to where the wiring crosses a property line or the closest practicable point to where the wiring enters a multiunit building or buildings." The precise location of the MPOE's at the Properties is either the property line or the point where BellSouth's trunk cables enter the utility closets. Moore Declaration at ¶ 10. In either event, the Petitioners have always been within their rights to use the Twisted Pair Wiring as it is on the customer's side of the MPOE. Indeed, if BellSouth had exercised its right to set the demarcation point at the MPOE under the Federal Rule, there would be no dispute before the Commission today.

Instead, BellSouth set the demarcation point at the customer's premises in reliance on its own interpretation of the Florida Rule. Nothing in 47 C.F.R. §68.105

requires the Owner's to seek a relocation of that illegal designation using the procedures in 47 C.F.R. §68.105(d)(3).¹²

There is no basis in law or fact for the Commission to grant the Petition on a "prospective" basis only. Indeed, in light of BellSouth's threats, the Commission should make clear that BellSouth acted unlawfully when it purported to set the demarcation points at the customer's premises pursuant to the Florida Rule and that the Petitioners have been acting lawfully at all times by using facilities on the customer's side of the MPOE.

Conclusion

For the reasons set forth above and in the Petition, Petitioners respectfully request that the Commission order that:

- A. The Owners have lawfully set the demarcation point at a point six inches (6") on the carrier's side of the 66 block in the utility closets at the Properties pursuant to 47 C.F.R. §68.105(d)(2); and
- B. ClickQuick II has the right to use the facilities on the customer's side of those demarcation points without interference by BellSouth; and

¹² By setting the demarcation point six inches (6") on the carrier's side of the 66 block, the Owners have not assumed responsibility for maintaining the cross-connect panel that lies between that point and the MPOE. See Moore Declaration at ¶¶ 9 and 10. Once BellSouth elected not to set the demarcation point at the MPOE, the Owners were well within their rights to set the demarcation points in a manner that does not require them to assume maintenance responsibilities for equipment between the Owners' designated demarcation points and the MPOE. BellSouth could have forced the Owners (under the Federal Rule) to maintain the cross-connect panel by selecting the MPOE at either the property line or the utility closets as the demarcation points. BellSouth elected not to do so. It cannot now complain about maintenance responsibilities arising out of the Owners' lawful designation of demarcation points at places other than the MPOE.

- C. §25-4.0345(1)(B)(2) of the Florida Administrative Code is preempted to the extent it conflicts with 47 C.F.R. §68.105(d)(2) in the designation of the demarcation point; and
- D. BellSouth illegally set the demarcation points at the customer's premises.

Dated: June 19, 2003



W. James Mac Naughton

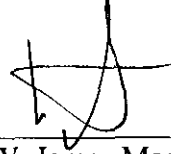
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CERTIFICATION OF SERVICE

I hereby certify that a true and correct copy of the foregoing Reply Comments have been mailed to the persons named on the attached list.

Dated: June 19, 2003



W. James Mac Naughton

Attorney for Petitioners ClickQuick II, LLC,
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State of Florida

Public Service Commission
-M-E-M-O-R-A-N-D-U-M-

DATE: April 28, 2003
TO: Mary Andrews Bane, Executive Director
FROM: Division of External Affairs (Miller) *CM*
Office of General Counsel (Dodson) *JD*
Division of Competitive Markets & Enforcement (Moses) *MT*
RE: Draft FPSC Comments in Response to ClickQuick's Petition for Declaration Ruling on
FPSC Preemption of the Demarcation Rule
Critical Information: Please place on May 5 Internal Affairs. FPSC Approval of
Comments is Sought.

On April 21, ClickQuick II filed with the FCC an "Amended Petition for Declaratory Ruling that location of the Demarcation Point pursuant to 47 C.F.R. Sec. 68.105(d)(2) preempts the location of the Demarcation Point pursuant to Sec. 25-4.0345(1)(B)(2) of the Florida Administrative Code."

The FPSC has determined the demarcation point is at the physical point of connection between the telephone network and the customer's premises wiring. The FCC has determined the demarcation point to be the "minimum point of entry" or the "closest practical point to where the wiring crosses a property line or enters a multi-unit building, which could be a basement or equipment room. If ClickQuick is successful, the FPSC rule will be preempted.

We are recommending the FPSC file comments and request approval of the attached draft comments. The draft comments explain the FPSC's demarcation point, rationale and ask the FCC to deny ClickQuick's petition.

ClickQuick II is engaged in providing high speed internet access services to the residents of large multi-family residential properties in West Palm Beach, Florida, at a property known as San Marino at Laguna Lakes. The dispute involves the location of the demarcation point in multi-tenant buildings.

BellSouth took the position that the demarcation point for telephone wiring is at the wall plate inside each dwelling unit based on FPSC Rule 25-4.0345(1)(B)(2). That rule defines demarcation point as "the point of physical interconnection (connecting block, terminal strip, jacks protector, optional network interface, or remote isolation device) between the telephone network and the customer's premises wiring." Unless ordered otherwise by the Florida Public Service Commission, the location of this point (for a single-line/multi-customer building) is within the customer's premises at a point easily accessed by the customer. Based on this, BellSouth sent ClickQuick a "cease and desist" letter. Then ClickQuick, the petitioner, filed with the FCC noting the Federal rule and asked the FCC to order that the FPSC rule be preempted. The two rules are in conflict.

MEMO to MARY BANE
Page Two

Attached is a short set of comments in opposition to ClickQuick's petition. (Attachment A)
Also, the applicable FCC rule and FPSC rules are attached. (Attachments B and C) The FCC has
not yet provided a notice or deadline for comments.

CBM:tys
Attachment
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Exhibit A

**BEFORE
THE FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D. C. 20554**

In the Matter of

ClickQuick II, LLC, San Marino at)
Laguna Lakes, L.L.C. a/k/a Bear Lakes)
Associates, Ltd., and Villa Del Sol,)
L.L.C. a/k/a VDS Associates, Ltd.)
Against BellSouth Telecommunications, Inc.)
First Amended Petition for Declaratory)
Ruling that the Location of the Demarcation)
Point Pursuant to 47 C.F.R. §68.105(D)(2))
Preempts the Location of the Demarcation)
Point Pursuant To §25-4.0345(1)(B)(2))
Of the Florida Administrative Code)

WC Docket No. 03-112

DECLARATION OF ALAN MOORE

1. I am the Manager of ClickQuick II, L.L.C. ("ClickQuick II"). I make this declaration in support of the Petition by ClickQuick II and San Marino at Laguna Lakes, L.L.C. a/k/a Bear Lakes Associates, Ltd., and Villa Del Sol, L.L.C. a/k/a VDS Associates, Ltd. (jointly the "Owners") for a declaratory ruling that the location of the demarcation point designated by the Owners pursuant to 47 C.F.R. §68.105(d)(2) (the "Federal Rule") at two multiunit residential properties (the "Properties") preempts the location of the demarcation point pursuant to §25-4.0345(1)(B)(2) of the Florida Administrative Code (the "Florida Rule"). I also make this declaration to respond to the comments of BellSouth Telecommunications, Inc. ("BellSouth") dated June 4, 2003 in opposition to the Petition (the "BellSouth Comments").

2. ClickQuick II uses two (2) twisted pairs of wiring (the "Twisted Pair Wiring") at the Properties to provide its service. The Twisted Pair Wiring runs from the 66 block in the utility closet into each apartment unit. BellSouth claims that the use of the Twisted

Pair Wiring by ClickQuick II precludes BellSouth from providing its service to the residents of the Properties using the same Twisted Pair Wiring. That is not correct.

3. It is the regular and routine business practice of ClickQuick II to let the customer decide whether and to what extent ClickQuick or BellSouth will use the Twisted Pair Wiring in the event there is a conflict in the use of the Twisted Pair Wiring. In the few cases where the customer has expressed a preference that BellSouth use the Twisted Pair Wiring (e.g. the customer wants four phone lines), ClickQuick II has disconnected its facilities from the Twisted Pair Wiring so the resident can get service from BellSouth using that Twisted Pair Wiring. In those few cases, BellSouth is actually using the same Twisted Pair Wiring formerly used by ClickQuick II to provide service. BellSouth has not identified a single resident at either Villa Del Sol or San Marino who has in fact been unable to receive any and all services they want from BellSouth due to the use of Twisted Pair Wiring by ClickQuick II.

4. BellSouth claims that it offers only "one telephone line" on each twisted pair of wiring at the Properties. That is not correct.

5. BellSouth offers a service in South Florida commonly known as "Ring Master" which consists of two separate phone lines (each with a distinctive ring) on a single twisted pair wire. Moreover, BellSouth also offers DSL service at Villa Del Sol which uses the same single twisted pair wire as the dial tone. Thus a resident could have four phone lines (plus two additional DSL lines at Villa Del Sol) before BellSouth would need to use the Twisted Pair Wiring used by ClickQuick II.

6. ClickQuick has provided BellSouth with a contact person and phone number that BellSouth should call if and when BellSouth encounters technical problems or

interference that BellSouth believes to be attributable to ClickQuick II and/or the use of the Twisted Pair Wiring by ClickQuick II. ClickQuick II has not received any complaints directly from BellSouth identifying any specific technical problem or interference arising out of ClickQuick II's operations and/or the use of the Twisted Pair Wiring by ClickQuick II. ClickQuick II has not received any complaints from any residents of the Properties identifying any problem or interference with their BellSouth service arising out of ClickQuick II's operations and/or the use of the Twisted Pair Wiring by ClickQuick II.

7. In one instance, a BellSouth technician met with a ClickQuick II technician to discuss alleged interference with BellSouth dial tone service because of ClickQuick II operations. The ClickQuick II technician shut down the ClickQuick II system and the alleged problem encountered by the BellSouth technician continued unabated, prompting the BellSouth technician to admit that whatever technical problems BellSouth was having were not being caused by ClickQuick II.

8. Villa Del Sol has thirteen (13) buildings and each building has twenty-four (24) apartment units. San Marino has seventeen (17) buildings and each building has twenty-four (24) apartment units. Each building has one (1) utility closet where both BellSouth and ClickQuick II have located their equipment.

9. BellSouth ran a trunk cable into each utility closet in each building at the Properties. The trunk cable is connected to a cross-connect panel. There are twisted pairs of wires known as jumper cables that run from the cross-connect panel to the 66 block. There are four twisted pairs of wires that run from the 66 block into the apartment units. ClickQuick II attaches its wires to the 66 block and thus to two pairs of the

twisted pair wiring. The demarcation point selected by the Owners pursuant to the Federal Rule is six inches (6") on the carrier's side of the 66 block which is, in effect, the jumper wires between the cross-connect panel and the 66 block.

10. Under the Federal Rule, the point where the trunk cable enters the utility closet is the Minimum Point of Entry at the Properties under 47 C.F.R. §68.105 because it is "the closest practicable point to where the wiring enters a multiunit building or buildings." Thus if the demarcation point had been set at the MPOE (by either BellSouth or the Owner) then ClickQuick II would be using facilities on the customer's side of the demarcation point.

11. Under the Florida Rule, the demarcation point for "Multi Line systems" is "[a]t a point within the same room and within 25 feet of the FCC registered terminal equipment or cross connect field" ("Florida's Multi Line Demarcation Point Rule"). If the demarcation point was set according to Florida's Multi Line Demarcation Point Rule, then ClickQuick II would be using facilities on the customer's side of the demarcation point.

12. Under the Florida Rule, the demarcation point for "Single Line systems" is "[w]ithin the customer's premises at a point easily accessed by the customer." If the demarcation point is set according to this rule, then ClickQuick II would be using facilities on the carrier's side of the demarcation point.

13. BellSouth has suggested that the Owner's should set the demarcation point at the MPOE and pay the cost of "moving" the MPOE. This suggestion has no technical merit and is offered solely for the purpose of making the Owners and ClickQuick II incur unnecessary costs.

14. BellSouth and ClickQuick II can and do both use the 66 blocks and twisted pair wiring to the apartment units without damaging the facilities or interfering with each other's service. There simply is no need to modify existing equipment or install new facilities.

15. ClickQuick II has examined the feasibility of pulling new wires through the conduits that run from the utility closets to the apartment units in each building. ClickQuick II has determined that this is not feasible as the conduits are fully occupied by the existing wires. If ClickQuick II is unable to use the Twisted Pair Wiring, it will have to incur substantial capital expenditures to rewire the building to deliver its service to the residents. Those expenditures are not economically feasible and ClickQuick II would likely have to abandon its high speed internet service at the Properties. That would leave BellSouth as the sole and exclusive provider of high speed internet services at Villa Del Sol and no high speed internet service provider at San Marino.

16. I declare, under penalty of perjury that the foregoing is true and correct.

June 17, 2003



Alan Moore